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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~476.~~ 258

EDWIN BATES, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JANUARY 12, 1871.

Dec. 1871

SUPREME COURT OF THE UNITED STATES.

No. 476.

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1 *Petition.*

United States Court of Claims.

EDWIN BATES
vs.
THE UNITED STATES.

To the honorable the United States Court of Claims:

The petition of Edwin Bates, formerly a citizen and resident of the State of Vermont, but for several years last past a citizen and resident of Charleston, S. C., showeth: That in the month of March, A. D. 1865, your petitioner was the owner and in possession of eighty-three bales of good upland cotton, weighing forty-one thousand nine hundred and ninety-one pounds, then stored in the city of Charleston.

That, in the month of April, 1865, after the occupation of said city by the United States forces, all of said cotton was seized and taken possession of by Captain S. H. Sturtevant, acting, as your petitioner is informed and believes, under the orders of the Treasury Department, but without the consent of your petitioner and against his will; and that no part of said cotton or its proceeds was appropriated in any way to the use of the Army or Navy of the United States, but that said cotton was turned over by the officer seizing it to an agent of the Treasury Department, by whom it was sold, and the proceeds thereof paid into the Treasury of the United States.

Your petitioner avers that he is unable to state the precise amount for which said cotton was sold, or the expense attending the seizure, shipment, transportation, and sale; but he states, on information and
2 belief, that the said cotton was sold by the agent of the Treasury Department for sixty-five (65) cents per pound, the aggregate of which was twenty-seven thousand two hundred and ninety-four dollars and fifteen , ($27,294 15,) and the expenses thereof did not exceed five per cent., and the nett proceeds thereof, which were paid into the Treasury, amount to twenty-five thousand nine hundred and twenty-nine dollars and forty-five cents, ($25,929 45.)

Your petitioner further shows that his cotton has never been abandoned, or forfeited, or become liable to seizure under any of the acts of Congress in that behalf made and provided; and that it was not liable to seizure or capture under the laws of nations, or under the laws and usages of war; that no proceedings for the purpose of condemning said cotton have ever been instituted in any court or before any tribunal.

Your petitioner avers that, his property having been taken possession of by the United States Government, and appropriated by it, an implied contract has arisen to make your petitioner just compensation therefor by paying him all said cotton was reasonably worth at the time and place it was so taken from him as aforesaid.

And your petitioner shows that said cotton was worth, at the time of its seizure, twenty-seven thousand two hundred and ninety-four dollars and fifteen cents, ($27,294 15,) which amount he is entitled to recover from the United States under the implied contract as above.

Your petitioner further shows that, if there has been a valid and lawful capture of said cotton, which he understands is asserted by the United States, he is, nevertheless, entitled to receive the nett proceeds of it, amounting to twenty-five thousand nine hundred and twenty-nine dollars and forty-five cents, ($25,929 45,) under the provisions of the act

of Congress, approved March 12, A. D. 1863, entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States."

Your petitioner further shows that he has never voluntarily aided, abetted, or given encouragement to rebellion against the Government of the United States.

EDWIN BATES.

3 Edwin Bates, being duly sworn, deposeth and sayeth that he is the claimant named in the foregoing petition, and that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made; that he is justly entitled to the amount therein claimed from the United States, after allowing all just claims and offsets; and that he believes the facts stated in said petition are true.

EDWIN BATES.

Subscribed and sworn to before me this 23d day of January, A. D. 1867.

WILLIAM GURNEY,
Comm'r Court of Claims.

P. O. address of claimant, Charleston, S. C.
do. do. counsel, D. N. Cooley, Washington, D. C.

4 In the United States Court of Claims. December term, A. D. 1867.

EDWIN BATES
vs.
THE UNITED STATES. } No. 2582.

And the said defendants, by their solicitor, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of $25,939 45, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

JOHN J. WEED,
Assistant Solicitor for the United States.

EDWIN BATES
vs.
THE UNITED STATES. } 2582. Dec. term, 1868.

And for a further plea to the said petition the said defendants say that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant did not, "within two years after the suppression of the late rebellion, prefer his claim to the proceeds" of the property mentioned and de-

scribed, in the Court of Claims, as provided by the 3d section of the act of Congress approved March 12, 1863, and entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States."

T. LYLE DICKEY,
Assistant Attorney General.

And for a further plea to the said petition the said defendants say that the claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant, at the time of the filing of his said petition, was an alien, and that the said seizure and taking possession of the said property named in the said petition, and the said several acts and doings of the defendants, their officers, servants, and agents therein set forth were made and done in the administration of, and in virtue and under color of, the act of Congress entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," approved M'ch 12, 1863.

Whereby and by virtue of the provisions of the act of Congress entitled "An act regulating judicial proceedings in certain cases, for the protection of officers and agents of the Government, and for the better defence of the Treasury against unlawful claims," approved July 27, 1868, the claimant is barred of his said action against the defendants.

T. LYLE DICKEY,
Assistant Attorney General.

5 United States Court of Claims.

EDWIN BATES
vs.
THE UNITED STATES. } No. 2582.

Replication.

1. And now comes the claimant, by his solicitors, and for replication to the first plea of the defendant, herein pleaded, says that he denies that the said claimant did not, within two years after the suppression of the rebellion, prefer his claim to the proceeds of the property mentioned and described in said petition, in the Court of Claims, as provided by the 3d section of the act of Congress, approved March 12, 1863, entitled "An act to provide for the collection of abandoned property," &c., as alleged in the said defendant's plea. And this he prays may be inquired of by the court.

Wherefore the said claimant prays judgment.

COOLEY & CLARKE,
Sol's for Claimant.

Filed Jan'y 13, 1869.

2. And for replication to the second plea of the said defendant, herein pleaded, this claimant says that he denies that the said claimant, at the time of filing his said petition herein, was an alien, or that the said seizure and taking possession of the said property named in said petition, and the several acts and doings of the defendants, their officers, servants, and agents therein set forth, were made and done in the administration of, and in virtue and under color of, the act of Congress entitled

as alleged in the said plea. And this he prays may be enquired of by the court.

COOLEY & CLARKE,
Sols. for Claimant.

7 In the Court of Claims.

EDWIN BATES
vs.
THE UNITED STATES. } 2582.

And now, to wit, 21st of March, A. D. 1870, the court, upon due consideration of the premises, find in favor of the defendant, and do order, adjudge, and decree that the said Edwin Bates take nothing by his suit, and that his petition be dismissed.

By the court.

A true copy of record.

8 In the United States Court of Claims. Dec. term, 1869.

EDWIN BATES
vs.
THE UNITED STATES. } 2582.

The claimant, by his solicitors, comes and moves the court for the allowance of an appeal from the judgment of this court in this cause, to the Supreme Court of the United States; the amount in controversy exceeding three thousand dollars.

Washington, D. C.

D. N. COOLEY &
JOHN J. WEED,
His Solicitors.

Filed in clerk's office, March 21, 1870.

Ordered, that the appeal as prayed by claimant's counsel in the case of Edwin Bates v. The United States, 2852, be allowed.

March 21, 1870.

By the court.

9 In the United States Court of Claims.

EDWIN BATES
vs.
THE UNITED STATES. } No. 2582.

The finding of facts and the conclusions of law on said facts on which the court founded its judgment.

This cause coming on to be heard the 21st day of March, 1870, before all of the judges of the Court of Claims, the said court finds as matters of fact:

I. That the claimant was the owner of eighty-two bales of upland cotton at the time of the capture of Charleston, S. C., by the United States military authorities in February, 1865, and that subsequent to the capture of said city as aforesaid, the cotton owned by the claimant

was taken from his possession by the officers and agents of the United States; and that said eighty-two bales of cotton were shipped to Simeon Draper, United States cotton agent, in the city of New York, and were by him or under his authority sold for and on account of the United States; and that the net proceeds of said cotton was paid into the Treasury of the United States.

10 II. That the claimant is a citizen of the United States, and a native of the State of Vermont, but for several years previous to the breaking out of the late rebellion, he was a citizen and resident of the city of Charleston, S. C., and largely engaged in mercantile business there—clothing, &c.

III. That public sentiment in Charleston was almost unanimously in favor of secession and the war, and all who opposed it became obnoxious to the people there, and great surveillance exercised over them. Through reasonable apprehension of personal violence, all persons opposed to the rebellion were compelled to refrain from acts of loyalty to the United States, or even the open expression of sentiments favorable to the Government of the United States.

IV. That the claimant opposed secession in its inception, and in sentiment and speech at all times during the late rebellion maintained a loyal adhesion to the Government of the United States.

V. That the claimant contributed, whenever called upon, to aid in relieving the sufferings of the Union prisoners from time to time confined at Charleston during the late rebellion, and that such contributions were confined almost entirely to persons who were known to be in sympathy with and loyal to the Government of the United States

11 during the late rebellion.

VI. That the claimant, at the time of the capture of Charleston by the Union troops, met the said troops at the wharf where they disembarked in said city, and acted as a guide for them in their entrance to the city, and directed said troops to the United States arsenal, in danger of destruction from the fires set by the retreating rebels, and thus claimant was instrumental in saving from destruction valuable property of the United States.

VII. That the claimant was a man of large wealth, and largely engaged as a clothing merchant, which he continued until some time in the year , when he ceased doing business except such as he was required to do in settling and closing up his affairs.

VIII. That in the early part of the war, the claimant was a member of a fire company in the city of Charleston, and as such was sometimes called upon to do guard duty for the protection of property and person in said city.

IX. That the claimant voluntarily sought and accepted a clerkship in the confederate treasury department, which he held for several months, appropriating his salary to other employées in the department, but that this service in the confederate treasury department was resorted

12 to, as he states in his own deposition, as a subterfuge to avoid active military service in the rebel army.

X. That a conscription act was passed by the confederate congress in April, 1862, and by the terms of that act the claimant was liable to conscription, and that in the latter part of 1862, or early in 1863, the claimant having reason to believe he was about to be conscripted and put in the rebel army, he hired a substitute who entered the rebel service.

XI. That, on or about the day of , 186 , which was shortly after he had put in his substitute, the claimant received from a medical examining board, acting under the confederate conscription act, a cer-

tificate of disability for military service, which exempted him from all liability to conscription or to military duty, and upon receiving such certificate of disability, the claimant at once withdrew from his place in the confederate treasury department, and also resigned his place in the fire company, and continued in his private pursuits in Charleston.

XII. That the claimant purchased and dealt largely in the stock of the different blockade companies organized in Charleston, but that he did not take part in the establishment or organization of any such companies.

13 XIII. His interests were large in the blockade-running companies, one of which was largely engaged in running out cotton and bringing in supplies, provisions, shoes, and dry goods. His interest in the Atlantic Company is shown to have existed as late as the fall of 1864.

XIV. He owned $4,000 stock in the Cobia Blockade Company, and $10,000 in the Palmetto Company, and received dividends on the latter.

XV. The Palmetto stock was voluntarily purchased by the complainant as an investment, and held by him up to the close of the war.

On these facts the court held, as a conclusion of law, that the claimant had given aid and comfort to the late rebellion in the sense of the acts of Congress in such cases made and provided, and therefore ordered, adjudged, and decreed that said claimant's petition be dismissed.

By the court.

(Indorsed:) 2582. Edwin Bates vs. the United States.

14 In the Court of Claims.

EDWIN BATES
vs.
THE UNITED STATES. } No. 2582.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the counsel for claimant for the allowance of an appeal, as filed in the clerk's office March 21, 1870, and of the order of the court Mc'h 21, 1870, allowing the same; of the findings of fact, and the conclusion of law thereon, on which the court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this 14th day of December, 1870.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 476. Edwin Bates, appellant, vs. the United States. Court of Claims. Filed 12th January, 1871.

Supreme Court of the United States.

EDWIN BATES, Appellant,
vs.
THE UNITED STATES. } No. 258

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLANT.

I.

Statement of the Case.

The appellant instituted his suit in the United States Court of Claims, under the provisions of third section of the act of Congress, approved March 12, 1863, (commonly known as the "captured and abandoned property act,") to recover the net proceeds of eighty-three bales of Upland cotton, of which he was the owner at the time of the capture of Charleston by the United States military forces, in February, 1865.

On the 21st day of March, A. D. 1870, the Court of Claims rendered a judgment adverse to the appellant, and directed his petition to be dismissed, and from this judgment the appellant prosecutes this appeal.

II.

Findings of Fact.

The Court of Claims, in their findings of fact, certified to this court, find amongst other things as follows:

I. That the claimant was the owner of eighty-two bales

of Upland cotton, at the time of the capture of Charleston, S. C., by the United States military authorities, in February, 1865, and that subsequent to the capture of said city as aforesaid, the cotton owned by the claimant, was taken from his possession by the officers and agents of the United States, and that said eighty-two bales of cotton were shipped to Simeon Draper, United States cotton agent in the city of New York, and were by him or under his authority sold for and on account of the United States, and that the net proceeds of said cotton was paid into the Treasury of the United States.

* * * * * * * * * *

VIII. That in the early part of the war, the claimant was a member of a fire company in the city of Charleston, and as such was sometimes called upon to do guard duty for the protection of property and person in said city.

IX. That the claimant voluntarily sought and accepted a clerkship in the Confederate treasury department, which he held for several months, appropriating his salary to other employees in the department, but that this service in the Confederate treasury department was resorted to, as he states in his own deposition, as a subterfuge to avoid active military service in the rebel army.

X. That a conscription act was passed by the Confederate congress in April, 1862, and by the terms of that act the claimant was liable to conscription, and that in the latter part of 1862, or early in 1863, the claimant having reason to believe he was about to be conscripted and put in the rebel army, he hired a substitute who entered the rebel service.

XI. That on or about the day of , 186 , which was shortly after he had put in his substitute, the claimant received from a medical examining board, acting under the Confederate conscription act, a certificate of disability for military service, which exempted him from all liability to conscription or to military duty, and upon receiving such certificate of disability, the claimant at once withdrew from his place in the Confederate treasury department, and also resigned his place in the fire company, and continued in his private pursuits in Charleston.

XII. That the claimant purchased and dealt largely in the stock of the different blockade companies organized in Charleston, but that he did not take part in the establishment or organization of any such companies.

XIII. His interests were largely in the blockade running companies, one of which was largely engaged in running out cotton and bringing in supplies, provisions, shoes and dry goods. His interest in the Atlantic Company is shown to have existed as late as the fall of 1864.

XIV. He owned $4,000 stock in the Cobia Blockade Company, and $10,000 in the Palmetto Company, and received dividends on the latter.

XV. The Palmetto stock was voluntarily purchased by the complainant as an investment, and held by him up to the close of the war.

On these facts the court held, as a conclusion of law, that the claimant had given aid and comfort to the late rebellion in the sense of the acts of Congress in such cases made and provided, and therefore ordered, adjudged and decreed that said claimant's petition be dismissed.

III.

The errors assigned and urged by the appellant are:

1. That the several acts done and committed by the appellant as found by the Court of Claims in its 8th, 9th, 10th, 12th, 13th, 14th, and 15th findings of fact do not amount to acts of "*aid and comfort*" to the rebellion, within the intention and meaning of the provisions of the 3rd section of the act of March 12, 1863.

2. That the Court of Claims erred in not giving the appellant the benefit of the proclamation of amnesty issued by the President of the United States on the 25th day of December, A. D. 1868.

A. The acts done by the appellant as found by the Court of Claims in the 8th, 9th and 10th findings of fact, were *involuntary* acts, and were done by the appellant to *avoid* doing such acts as would give substantial "aid and comfort to the rebellion." The appellant should be given the benefit of *all* the findings of the Court of Claims, which afford explanation of the purpose of the appellant in doing the acts found by the Court of Claims to have been done by him; and these conclusively establish the fact that the appellant was at all times during the rebellion, at heart, a

loyal citizen, and devoted to the cause of the Union; and that if the acts done by the appellant do, in themselves, constitute acts of "aid and comfort" to the rebellion, then the facts found by the court in its 2d, 3d, 4th, 5th and 6th findings, conclusively rebut the presumption that the acts done by the appellant, were done with the *intent* and purpose of giving aid and comfort to the rebellion. And in the absence of this intent, the acts done are deprived of their criminal character.

The acts found by the Court of Claims to have been committed by the appellant, in the 12th, 13th, 14th and 15th findings of fact, do not constitute acts of "aid and comfort" to the rebellion, although they may have been *voluntary* acts on the part of the appellant.

B. Even if the acts done by the appellant, as found by the Court of Claims, do of themselves constitute acts of aid and comfort to the rebellion, still the appellant is relieved from the consequences of those acts by the President's proclamation of amnesty, dated December 25, 1868.

In the case of *Armstrong* vs. *The United States*, 13 Wallace, 155, this court affirm this proposition in the following language:

"We have recently held in the case of the United States *vs.* Klein, (13 Wall., 142,) that pardon granted upon conditions, blots out the offence if proof is made of compliance with the conditions; and that the person so pardoned is entitled to the restoration of the proceeds of captured and abandoned property, if suit be brought within two years after the suppression of the rebellion. The proclamation of the 25th of December, granted pardon unconditionally and without reservation. This was a public act of which all courts of the United States are bound to take notice, and to which all courts are bound to give effect. The Court of Claims, therefore, erred in not giving the petitioner the benefit of the proclamation."

In the case of *Pargoud* vs. *The United States*, 13 Wallace, 157, this court re-affirms these principles in the following language

"We have recently decided in the case of *Armstrong* vs. *The United States*, that the President's proclamation of December 25, 1868, granting pardon and amnesty unconditionally and without reservation to all who participated, directly or indirectly, in the late rebellion, relieves claimants of captured and abandoned property from proof of adhesion to the United States during the late civil war. It was unnecessary, therefore, to prove such adhesion or personal pardon for taking part in the rebellion against the United States."

These principles must be applied to and control the case under consideration. It results, therefore, that the judgment of the Court of Claims dismissing the petition of the appellant, must be *reversed*, and the Court of Claims directed to enter a judgment in favor of the appellant for the proceeds of the cotton belonging to the appellant, which the Court of Claims found had been paid into the United States Treasury.

JOHN J. WEED,
Attorney for the Appellant.